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OFFICE OF PETITIONS

In re Application of
Robert E. Arbogast, et al.
Application No. 10/724,526
Filed: November 28, 2003
Attorney Docket No. OH11717-006

ON PETITION

This is a corrected decision on the petition under 37 CFR 1.137(b), filed by October 18, 2004, to revive the above-identified application. Accordingly, the decision mailed November 23, 2004, is hereby vacated.

The petition is **GRANTED**.

The application became abandoned on May 9, 2004 for failure to timely respond to a Notice to File Missing Parts mailed March 8, 2004. The notice required an oath or declaration under 37 CFR 1.63, the basic filing fee, additional claim fees, and the surcharge under 37 CFR 1.16(e). On October 18, 2004, the present petition was filed, as well as an executed declaration, basic filing fee, additional claim fees, requisite surcharge and a 5-month petition for extension of time.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In this case a petition for extension of time had to be filed no later than October 8, 2004 to be effective. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Therefore, no extension of time fees are due on a petition for revival. In view thereof, the \$1,040 extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing using the declaration filed October 18, 2004.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy